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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of)
Mobile Services)

COMMENTS OF PLUSCOM, INC.

1. PlusCom, Inc. ("PlusCom"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1993), hereby submits its comments on the Second Further Notice of Proposed Rulemaking ("SFNPRM") in the above-referenced docket.^{1/} As discussed below, PlusCom urges the Commission not to expand the class of attributable non-equity interests as applied to small businesses, businesses owned by women, business owned by minorities, and rural telephone companies (the "Designated Entities"). More specifically, these Comments focus on the issues of joint marketing agreements and arm's-length equipment leasing transactions.

2. PlusCom (Personal Link Universal Service Communications) is a privately-owned minority corporation operating under the SBA small business eligibility guidelines, formed with the intention

^{1/} Second Further Notice of Proposed Rulemaking, Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-191 (July 20, 1994).

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of entering the broadband Personal Communications Service ("PCS") licensing process. Therefore, PlusCom is entitled to fully participate in the Commission's Competitive Opportunity Plan, including bidding in the entrepreneurs' bands and making use of the other Designated Entity preferences.

3. The SFNPRM requests comment on whether certain non-equity relationships should be attributable interests for purposes of spectrum limitations, and how such attribution rules should be applied to Designated Entity applicants and licensees. SFNPRM at ¶ 4. The Commission has heretofore attributed non-equity interests only if those interests resulted in some form of relinquishment of control of and responsibility for the licensed facilities by the licensee. Id. at ¶ 7 (citing six indicia culled from Intermountain Microwave, 24 R.R. 983 (1963), and its progeny). The Commission now seeks to extend attribution of non-equity interests to include agreements that do not meet the Intermountain relinquishment of control criteria. Id. PlusCom believes that the nascent Commercial Mobile Radio Services ("CMRS") industry is not the appropriate forum to expand attribution ownership criteria beyond the Commission's long-standing Intermountain test. In particular, such an expansion of Commission policy would place undue restrictions on Designated Entities' ability to creatively attain financial assistance. The benefits of non-equity relationships will help Designated Entities overcome the barriers to entry and operation of PCS licenses, particularly the lack of access to capital. Therefore, all non-equity relationships that pass muster under the

Intermountain relinquishment of control test should be non-attributable for Designated Entities.

4. However, to the extent the Commission imposes attributable interests to relationships considered in the SFNPRM, PlusCom wishes to comment on two particular areas.

5. The SFNPRM addresses joint marketing agreements as one of the possible attributable non-equity relationships. Id. at ¶¶ 14-16. Under a joint marketing agreement, two or more providers would realize cost savings by marketing their services under a common name, thereby pooling resources to benefit themselves and consumers. Licensees retain full control of their facilities and maintain their operating independence, while taking advantage of joint marketing efforts and the force of brand name recognition that arises from such efforts. By taking advantage of the brand name of a larger entity, PlusCom believes that joint marketing efforts will greatly enhance the ability of Designated Entities to compete in the CMRS marketplace. Joint marketing agreements will not undermine the integrity of a Designated Entity, and should have no bearing on a Designated Entity's status. Therefore, the Commission should conclude that joint marketing agreements do not constitute an attributable interest in this proceeding, both for the purposes of spectrum caps, and for the purposes of Designated Entity status.

6. PlusCom also respectfully requests that the Commission address and clarify the issue of arm's-length equipment leases in this proceeding. PlusCom is concerned with a scenario whereby a Designated Entity enters into an equipment leasing agreement with

a non-attributable investor in the licensee. If an equipment lease agreement were deemed attributable, it could raise the non-control group ownership interest above the maximum, and the Designated Entity would lose its status. There is no reason why a Designated Entity could not lease instead of purchase its equipment from a third party. It should make no difference if the third party lessor were an investor or an outside party, as long as the lease is structured as an arms-length transaction. Therefore, the Commission should affirm PlusCom's view that equipment leasing agreements arising from arm's-length transactions not be attributable for any purposes, even if the lessor of the equipment happens to be one or more non-attributable investors in the licensee.

WHEREFORE, for the above stated reasons, PlusCom respectfully urges the Commission to adopt its regulations regarding the regulatory treatment of mobile services in accordance with the above proposals.

Respectfully submitted,

PLUSCOM, INC.

By: 

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Dated: August 9, 1994

CERTIFICATE OF SERVICE

I, Renee Gray, a secretary to the law firm of FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P., hereby certify that on this 9th day of August, 1994, I served a true copy of the foregoing "**COMMENTS**" by hand delivery, upon the following:

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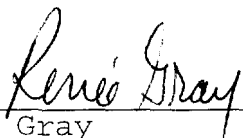
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